

# **AS 44.62.218. Regulations Affecting Small Businesses, 2005**

## **A Program Report**

Presented to the  
Alaska State Legislature

By  
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April 2, 2008



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## Why DCCED Wrote this Report

The passage of HB 33\* in 2005, added a section to the Alaska Administrative Procedure Act--AS 44.62.218. *Regulations Affecting Small Businesses*. This section created Alaska's three-year pilot program to reduce the costs and impact of regulations on small businesses in the state (Program). Section 218 directs four State agencies to notify the Department of Commerce, Community, and Economic Development (Department) of any proposed changes to their agencies' regulations; and to prepare economic effect statements and regulatory flexibility analyses on their proposed regulations. The Department of Commerce is to work collaboratively with the four State agencies (Four Agencies) and provide to the Alaska Legislature by March 15, 2008, a report on whether or not Section 218 is effective in making regulations less intrusive and less costly for small businesses.

To fulfill this mandate the program:

1. reviewed 12 regulations projects submitted by the Four Agencies;
2. created a small business regulations website with alerts on regulations projects, and resources for regulators;
3. created printed outreach materials; and
4. surveyed 1,000 small business owners on how Alaska's regulatory process impacts their business's start-up, growth, and ability to make a profit.

## Recommendations

1. Reauthorize AS 44.62.218. Regulations affecting small businesses.
2. Redefine the program's role via amendments to AS 33.020.

## AS 44.62.218 Small Business Regulations Program

- ◆ Section 44.62.218 is increasing the State's capacity to foster a healthy small business environment by becoming a source of information, resources, training, referrals, and materials on regulations and regulatory issues to Alaska's entrepreneurs and small business owners.
- ◆ The Program is increasing the State's visibility among the small business development organizations statewide, which has led to the establishment of the Small Business Task Force, a collaborative effort of the State and small business services providers statewide to enhance small business successes in Alaska.
- ◆ The Program is increasing the State's collaborative partnerships with federal, state, and non-governmental agencies that seek to diminish the cost and intrusion of regulations on small businesses in Alaska and the nation.
- ◆ In an informal survey of the regulators from the Four Agencies and the community business providers in the state:
  1. 75 percent of the regulators that responded want the Program to sunset; and
  2. 100 percent of the community business providers, many of them members of the Small Business Task Force, want the Program reauthorized, with the definition of "small business" changed from "100 employees" to "50 employees".



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## Introduction

With the passage of House Bill 33 in 2005, AS 44.62. Administrative Procedure Act was amended by adding a section to it, 218. *Regulations Affecting Small Businesses*. This section directs the Departments of Commerce, Community, and Economic Development; Environmental Conservation; Health and Social Services; and Labor and Workforce Development (Four Agencies) as follows before adopting a proposed regulation that may govern the conduct of small businesses:

1. notify the Department of Commerce, Community, and Economic Development (Department) that the state agency intends to adopt the proposed regulation or has received a petition under AS 44.62.220 to adopt the proposed regulation;
2. prepare an *economic effect statement* and a *regulatory flexibility analysis*.

AS 44.62.218(f) also requires the Department to advise and assist the Four Agencies to comply with this new section.

AS 44.62.218, requires that the Department of Commerce, Community, and Economic Development (Department) provide to the legislature by no later than March 15, 2008, a report on the effectiveness of this section in making regulations less intrusive and less costly for small businesses.

To fulfill the mandate of AS 44.62.218(f), in March 2006, the Department hired a range 18 Development Specialist I as Coordinator for the Small Business Regulations Program (Program), and the Department of Law's Regulations Attorney, in Juneau, provided this staff member with technical training, substantive support, and guidance.

# Report Requirements

## Statutory Language

Delayed repeal of section. - Under Sec. 2, ch. 91, SLA 2005, this section is repealed January 1, 2009.

Cross References -

For duty of the Department of Commerce, Community, and Economic Development to provide to the legislature no later than March 15, 2008, a report on the effectiveness of this section in making regulations less intrusive and less costly for small businesses, see sec. 3, ch. 91, SLA 2005, in the 2005 Temporary and Special Acts.

## Report

## Program Results

1. **The Program is increasing the Department's ability to deliver consistently good customer service with follow-up and tangible results to the public.** The Program is evolving into a single-point-of entry business resource for entrepreneurs, small business owners, community business providers, other State agencies, and Outside callers. The program is addressing one need identified in the *2006 Transition Report* that stated "the Department had no established procedure for handling consumer complaints". Since March 2006, the Program has handled over 500 contacts, at least 20 percent of which involved a complaint from a small business owner. It was clear from the e-mails, phone calls, or in-person complaints from individuals and organizations that the contacts expected the Program to be their advocate with the ability to, as one contact put it, "help blunt the impact of...regulations on small business"<sup>1</sup>. After listening to the contacts' complaints or concerns, and without representing the Program as an advocate, the Program staff followed up with the appropriate agency or organization in order to get "the other side of the story" or to unearth statutory or regulatory drivers behind the situation. In the case where the issue involved inflexible State, federal, municipal, or tribal, laws or regulations, the Program staff advised the contact about these. In other cases where the issue involved personalities, misinterpretation of language in application forms or e-mail communications, delays due to understaffing, the Program staff was able to communicate

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<sup>1</sup> See Appendix J List of contacts with complaints on regulations-related matters.



with the agencies or organizations involved, often cutting red tape or getting clarification of complex or poorly drafted forms or instructions. Still in other cases, the Program was able to refer the contact to the correct party in the State.

2. **The Program is helping to establish the Department as a player and a leader in small business services in Alaska.** In response to comments made by the staff of the Small Business Administration<sup>2</sup> and of the Alaska Village Initiatives<sup>3</sup> to the Program staff, and in collaboration with the staff of the Office of Economic Development, the Program has established the Small Business Task Force, a collaborative partnership between the Department and several community business services providers. Members of this task force include the Small Business Administration, Small Business Development Center, Alaska Village Initiatives, University of Alaska Center for Economic Development, Alaska Manufacturers' Extension Program, Alaska Federation of Natives and other State, Federal, and community business resources. The main purpose of the group is to network, stay informed about each other's activities and specialties, and best serve the public by avoiding duplication and redundancy in services delivered. To date this task force has had four meetings, and has produced an at-a-glance sheet of the services offered by over 50 business providers around the state.

In addition, The Program has its own Small Business Regulations website<sup>4</sup> that promotes the Program and informs users about current regulatory projects and issues, and about how to participate effectively in Alaska's regulatory process. From March 2006 to date the site has received 12,000 visitors.

3. **The Program is increasing the Department's capacity to address regulatory issues.** The Program is able to identify, interpret, apply regulations, and address regulatory issues that impact the Department's small business outreach efforts, and or shape the small business climate in Alaska. The Program worked collaboratively with the staff of the statutorily created Alaska Regional Development Assistance Program (the ARDORs) to address the Ombudsman's recommendations for the creation of agency policies and procedures for the ARDORs' grant. In addition the Program assisted the ARDOR staff in reviewing and rewriting 3 AAC 57, Alaska regional development assistance program.<sup>5</sup>

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2 Verbal communiqué to Program staff, made by Mr. Sam Dickey, Deputy Director SBA Region 10, November 2006, ""The SBA looks to the Department of Commerce to be the leader among the business services providers in the state."

3 Verbal communiqué to Program staff, made by Mr. Charles Parker, Executive Director, Alaska Village Initiatives, February 17, 2007, "For business information, Rural Alaskans always check the Department of Commerce website first."

4 [http://www.commerce.state.ak.us/oed/small\\_bus/small\\_bus\\_regulation.cfm](http://www.commerce.state.ak.us/oed/small_bus/small_bus_regulation.cfm) This website received 12,000 visitors between March 2006 and November 2007.

5 The Department has suspended this regulations project in order to pursue changes to the ARDORs via a legislative bill.

4. **Through increased interagency collaboration, the Program is increasing the quality of the Department's customer service to small businesses and entrepreneurs.** In order to better serve callers and walk-ins to the Department, and in collaboration with the staff from the Office of Economic Development, the Program helped launch the Small Business Assistance Center(Center)—a website with over 150 direct links to small business resources throughout Alaska and Outside. The Center has evolved into a single-point-of-contact referral center from which users connect directly with other agencies or State staff that can best address the users' questions, concerns, and challenges.

Through this stream of referrals, the Program has started to cultivate working relationships [that have nothing to do with the mandates of AS 44.62.218(f)] with various agencies. These agencies include the Department of Labor Research and Analysis Division; the Department of Environmental Conservation Environmental Health; the Department of Health and Social Services Divisions of Seniors and Disabilities Services; the Department of Administration's General Services Division; the Department of Public Safety's State Fire Marshall; various municipal and borough agencies; Small Business Administration and its grantee organizations; and Department of Veterans Affairs, among others. This inter-agency collaboration has enabled the Department to deliver excellent customer service. In addition it has made it possible for the Program to conduct its 2006 survey of small business owners and regulations, and produce the booklet for small business owners, *Alaska Preferences for State Contracts, 2007*.<sup>6</sup>

## Program Challenges

1. **The Program is not clearly defined as an ally of the Four Agencies, nor as a regulatory watchdog for small businesses.** The Program is not empowered to "advise and assist a designated state agency to comply". It has no authority to initiate advice-giving or assistance to the Four Agencies as required in AS 44.62.218(f).

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<sup>6</sup> Letter from Ms. Kristin Ryan, Director Division of Environmental Health, November 26, 2007, "...we believe AS 44.62.28. is redundant, creates additional regulatory costs without benefit, and should not be reauthorized.

We do however, find that the Small Business Assistance Program plays a valuable role in helping small businesses understand the regulatory process and identifying small business development resources. We appreciate the excellent working relationship we have developed with you and the many referrals which you have made to us. We recommend that the small business assistance portion of the program continue."

## Recommendations

1. **Reauthorize AS 44.62.218. Regulations affecting small businesses, with some amendments.** The Program should continue under the auspices of the Office of Economic Development within the Department of Commerce to serve as a contact point for small businesses faced with state regulatory issues. The program should be reformed so that it has this emphasis rather than one of vetting the regulations issued by the four denominated state agencies.
2. **Change the definition of “small business” to one that employs 50 or less employees.** This recommendation is being made by the Small Business Development Center (SBDC) that works closely with small businesses with 50 or less employees, and considers businesses with 100 or more employees capable of having their own regulatory issues personnel.
3. **Redefine the Program’s role by amending AS 44.33.020. Duties of the department.** Incorporate the Program into the Department of Commerce, Community, and Economic Development statute, and place it within the Office of Economic Development as part of its small business outreach programs with a mandate *to assist in creating a business climate in which small businesses can thrive*. The revised program would establish a procedure for handling a small business’ minor or unintentional regulatory violations; reviewing complaints and addressing them in an informal person-to-person setting before they escalate to the Ombudsman or judicial level; and gathering feedback about the impact of recently adopted regulations. It would provide the small business community with a vehicle to communicate with and interact positively with state government and the Administration.
4. **Refine the Mission of the Program.** Grant the Program the authority to report to the Four Agencies’ when their regulations are the source of complaints from small businesses. Empower the Program to receive, follow-up on, and seek informal person-to-person resolutions to complaints from small businesses; to research regulatory practices that result in barriers, unreasonable delays, or detriment to the start-up, development, or operation of a small business such as delayed licensing or permitting, unresponsive agency personnel, or discrepancies in information received from more than one agency.

## Attachments

### A - Four Agencies' Regulations Projects

#### Economic Effects Statements and Regulatory Flexibility Analyses Received by the Program

Department	Regulations	DOL #	Date
DHSS	Licensing & Certification Frontier Extended Stay	993-06-0131	3/21/2006
DCCED	Fisheries Revitalization	993-06-0134	4/22/2006
DHSS	Facilities and Units	993-05-0180	4/23/2006
DCCED	Mortuary Apprenticeship Trainees	993-06-0177	4/25/2006
DEC	Alaska Food Code	993-04-0078	7/10/2006
DHSS	OCS Juvenile Grievance Procedures Executive	993-06-0088	8/30/2006
DOLWD	Wage and Hour	993-07-0049	12/12/2006
DCCED	Trust Companies	993-03-0027	2/14/2007
DCCED	Persons who act as Fiduciaries in Alaska	993-03-0027	2/27/2007
DCCED	Fisheries Revitalization 2007	993-08-0020	10/1/2007



(h) This section does not create a private cause of action. If a designated state agency fails to comply with this section, the failure does not establish a ground on which to invalidate a regulation that has been filed by the lieutenant governor under AS 44.62.080 . This subsection is not intended to prevent judicial review of a regulation under AS 44.62.300 for a reason unrelated to this section.

(i) In this section,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "designated state agency" means the

(A) Department of Commerce, Community, and Economic Development;

(B) Department of Environmental Conservation;

(C) Department of Health and Social Services; or

(D) Department of Labor and Workforce Development;

(3) "governs the conduct" means regulates the manner in which a small business conducts its business activities but does not include the imposition of a fee to cover the cost of a state service if the fee is charged uniformly to all users of the service;

(4) "proposed regulation" means a proposal for a new regulation or for a change in or an addition to an existing regulation but does not include the repeal of an existing regulation;

(5) "regulation" has the meaning given in AS 44.62.640 but does not include an emergency regulation under AS 44.62.250 - 44.62.260;

(6) "small business" means

(A) a business entity, including its affiliates, that

(i) is independently owned and operated; and

(ii) employs fewer than 100 employees;

(B) a village corporation that employs fewer than 100 employees; in this subparagraph, "village corporation" has the meaning given in 43 U.S.C. 1602(j); or

(C) a nonprofit utility that employs fewer than 100 employees; in this subparagraph, "utility" has the meaning given in AS 42.05.990 .

## Disclaimer

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**Office of Economic Development – 2007**

## B - Program Brochure



# Small Business Regulations Program

**We look out for  
your small  
business!**

**(907) 269-5734**

- We monitor government regulations that affect small businesses
- provide information
- offer technical training on how to help change regulations

## The Administrative Procedure Act looks out for your business!

In 2005 Alaska amended AS 44.62.Administrative Procedure Act, to add Section 218 which states:

### **Sec. 44.62.218. Regulations affecting small businesses.**

(a) Before a designated state agency adopts a proposed regulation that may govern the conduct of small businesses, or when a person petitions a designated state agency under AS 44.62.220 to adopt a proposed regulation that may govern the conduct of small businesses, the designated state agency shall

(1) notify the department that the designated state agency intends to adopt the proposed regulation or has received a petition under AS 44.62.220 to adopt the proposed regulation;

(2) prepare an economic effect statement under (b) and (c) of this section; and

(3) prepare a regulatory flexibility analysis under (d) and (e) of this section.

(b) A designated state agency shall use the information received under AS 44.62.210 and 44.62.215, information provided by the department under (f) of this section, and other information in the files of the designated state agency to prepare the economic effect statement required by (a) of this section.

(c) The economic effect statement required by (a) of this section must provide, if available from the information gathered under (b) of this section,

(1) a general description of small businesses that would be subject to the proposed regulation;

(2) the projected reporting, record keeping, and other administrative costs that small businesses would be required to incur in order to comply with the proposed regulation, including an identification of the type of professional skills necessary to prepare the report or record or to take the administrative action;

(3) a statement of the probable economic effect that the proposed regulation would have on the small businesses whose conduct would be governed by the proposed regulation; and

(4) a description of any alternative methods of achieving the purpose of the proposed regulation that would be less intrusive or less costly for the small businesses whose conduct would be governed by the proposed regulation.

(d) In the regulatory flexibility analysis required by (a) of this section, a designated state agency shall consider using regulatory methods that

(1) minimize the effects of the proposed regulation on small businesses without compromising the objectives of statutes authorizing the proposed regulation; and

(2) are consistent with health, safety, environmental welfare, and economic welfare.

(e) When preparing the regulatory flexibility analysis under (d) of this section, the designated state agency shall consider

(1) the establishment of less stringent compliance or reporting requirements for small businesses;

(2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) the consolidation or simplification of compliance or reporting requirements for small businesses;

(4) the establishment of performance standards to replace design or operational standards for small businesses; and

(5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(f) The department shall advise and assist a designated state agency to comply with this section.

(g) This section does not apply to regulations

(1) of a board or commission whose members are subject to confirmation by the legislature;

(2) of the Alaska Energy Authority;

(3) of the Department of Environmental Conservation that are adopted under the authority of AS 46.03.050 - 46.03.900, AS 46.04, AS 46.08, AS 46.09, AS 46.11, AS 46.14, AS 46.35, or AS 46.45;

(4) of the Local Boundary Commission;

(5) mandated by federal law as a condition for participating in or implementing a federally subsidized or assisted program, or for obtaining or maintaining state primacy in a federal program;

(6) that address standards, requirements, or conditions for reimbursement by the designated state agency for services to be rendered on behalf of the designated state agency, that address amounts or rates of that reimbursement, or that adjust those amounts or rates to contain costs within the amount of appropriations from the legislature for a state fiscal year; or

(7) that establish standards, requirements, or conditions for the eligibility of an individual for assistance under AS 18 or AS 47, or that establish standards for determining the amount of assistance that an eligible person is entitled to receive.

## **C - Outreach Presentations**

1. DCCED State and Faith-Based Business Resources, Anchorage, September 2006
2. Taking the Mystery out of Regulations, Atwood Building, Anchorage, September 2006
3. Greater Palmer and Wasilla Chamber of Commerce joint meeting, October 2006
4. Small Business Development Center, Fairbanks, October 2006
5. Alaska 8(a) Association, November 2006
6. Kenai Peninsula Chamber of Commerce, December 2006
7. Chugiak Eagle River Women in Business, January 2007
8. Alaska Village Initiatives Small Business Conference, February 2007
9. Anchorage School District, Bring your child to work day, summer 2007.

Small Business Administration Office of  
Advocacy Conference, Kansas City, MO., May  
2007



## **D - Executive Summary Small Business Survey**

In the fall of 2006, the Small Business Regulations Program (Program) of the Department of Commerce, Community, and Economic Development (Department), conducted a four-month survey on Alaska small business owners' perceptions of how regulations impact their business activity. In collaboration with the Department's Division of Community and Regional Affairs (DCRA) and the State of Alaska Department of Labor and Workforce Investment Research and Analysis Division (DOLW-DRAD), the Program surveyed 1,000 small businesses statewide; the response sample was 246.

### **Respondent Profile:**

Ninety-three percent of the respondents had been in business for three or more years; respondents were from the services, construction and transportation sectors. The sample included respondents that operated storefront or bricks and mortar businesses, and home-based businesses. There were respondents that operated year-round and seasonally. The majority of respondents had more than one employee, and respondents did business at all levels of markets including worldwide.

**Impact of Regulations on Small Business Start-up, Growth, and Profit-Making:** Fifty-one percent of

respondents said that regulations are a necessary bother but don't really make it difficult to start a business.

Forty-two percent of respondents said regulations are a necessary expense but do not really make it too difficult to start a small business in Alaska.

Thirty-eight percent said regulations make it expensive to start a business.

Fifty-four percent of respondents said that regulations are necessary but don't really make it difficult to stay in business; 28 percent said regulations make it difficult to stay in business; and eight percent said they make it almost impossible to stay in business.

Forty-three percent of respondents said that regulations have an impact but do not make it difficult for a small business to make a profit; 32 percent said they make it difficult to make a profit; and ten percent said they make it almost impossible to make a profit.

**Business Owners' Perceptions of People Who Write Government Regulations:** Forty percent of the respondents said that people that write government regulations do not understand small businesses; 30 percent said "somewhat".

Fifty-two percent of respondents said that people that write government regulations do not understand how much time it takes for businesses to

comply with regulations; 27 percent said “somewhat”.

### **Impact of Regulations on Small Businesses’ Money and Time:**

Almost 44 percent of respondents said that in addition to a State of Alaska business license, they were required to buy a municipal, borough, or federal business license or permit.

Almost 90 percent of respondents identified workers compensation as the most costly regulations; 55 percent said fees for licenses and permits; 35 percent said keeping required records; and 33 percent said wage and hour.

Almost 76 percent of respondents said they spend over \$1,000 a year in complying with regulations. Of these, 40 percent said they spend over \$10,000 a year.

Fifty four percent of respondents said they spend over 30 hours a year in complying with regulations, with almost 45 percent spending 45 or more hours a year in complying.

### **How Small Businesses Find out About Regulations:**

Fifty-seven percent of respondents said they find out about proposed changes to regulations from mailed notices, while only nine percent identified the State of Alaska Online

Public Notice site as the main source of information on regulations.

Small Businesses’ Perception of Alaska’s Regulatory Process: Fifty-three percent of respondents said they understand how regulations are created; and 75 percent said they know that they have the right to give their opinion to a proposed regulation.

Fifty-three percent said they know that they have the legal right to petition for review of a regulation that impacts their businesses; 47 percent said they did not know about this right.

In the comments section, a number of respondents wrote down that it is a waste of time to participate in the regulatory process because small business owners’ input made no difference, and or it generated ill-will from regulators displeased with a business owner’s public comments.

### **Regulations Respondents Want to See Changed:**

Sixty percent of respondents said they would like to see changes made to Alaska’s mandatory workers’ compensation regulations; 35 percent said they would like to see changes made to fees for a business license, permits, and professional licenses.

**Recommendations that came out of this report:**

The State of Alaska needs to examine and make changes to the Alaska Workers Compensation program;

establish a collaborative and mutually-beneficial mechanism between the State and other political subdivisions to diminish redundancy in fees for licenses and permits;

reauthorize the Small Business Regulations Program and amend AS 44.62.218 to give the program the authority to address and troubleshoot small businesses' concerns about regulations, regulators, and or the regulatory process;

review, consolidate, and diminish the State's paperwork required to conduct business in Alaska and enforce the provisions of the federal Small Business Paperwork Relief Act 2002; and

amend the Administrative Procedure Act AS 44.62 to include language on mandatory five-year regulations' review; and

continue outreach efforts to encourage stakeholders to engage their right to petition for review of an existing regulation.

## **E - Sec. 44.62.218. Regulations affecting small businesses.**

(a) Before a designated state agency adopts a proposed regulation that may govern the conduct of small businesses, or when a person petitions a designated state agency under AS 44.62.220 to adopt a proposed regulation that may govern the conduct of small businesses, the designated state agency shall

(1) notify the department that the designated state agency intends to adopt the proposed regulation or has received a petition under AS 44.62.220 to adopt the proposed regulation;

(2) prepare an economic effect statement under (b) and (c) of this section; and

(3) prepare a regulatory flexibility analysis under (d) and (e) of this section.

(b) A designated state agency shall use the information received under AS 44.62.210 and 44.62.215, information provided by the department under (f) of this section, and other information in the files of the designated state agency to prepare the economic effect statement required by (a) of this section.

(c) The economic effect statement required by (a) of this section must provide, if available from the information gathered under (b) of this section,

(1) a general description of small businesses that would be subject to the proposed regulation;

(2) the projected reporting, record keeping, and other administrative costs that small businesses would be required to incur in order to comply with the proposed regulation, including an identification of the type of

professional skills necessary to prepare the report or record or to take the administrative action;

(3) a statement of the probable economic effect that the proposed regulation would have on the small businesses whose conduct would be governed by the proposed regulation; and

(4) a description of any alternative methods of achieving the purpose of the proposed regulation that would be less intrusive or less costly for the small businesses whose conduct would be governed by the proposed regulation.

(d) In the regulatory flexibility analysis required by (a) of this section, a designated state agency shall consider using regulatory methods that

(1) minimize the effects of the proposed regulation on small businesses without compromising the objectives of statutes authorizing the proposed regulation; and

(2) are consistent with health, safety, environmental welfare, and economic welfare.

(e) When preparing the regulatory flexibility analysis under (d) of this section, the designated state agency shall consider

(1) the establishment of less stringent compliance or reporting requirements for small businesses;

(2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) the consolidation or simplification of compliance or reporting requirements for small businesses;

(4) the establishment of performance standards to replace design or operational standards for small businesses; and

(5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(f) The department shall advise and assist a designated state agency to comply with this section.

(g) This section does not apply to regulations

(1) of a board or commission whose members are subject to confirmation by the legislature;

(2) of the Alaska Energy Authority;

(3) of the Department of Environmental Conservation that are adopted under the authority of AS 46.03.050 - 46.03.900, AS 46.04, AS 46.08, AS 46.09, AS 46.11, AS 46.14, AS 46.35, or AS 46.45;

(4) of the Local Boundary Commission;

(5) mandated by federal law as a condition for participating in or implementing a federally subsidized or assisted program, or for obtaining or maintaining state primacy in a federal program;

(6) that address standards, requirements, or conditions for reimbursement by the designated state agency for services to be rendered on behalf of the designated state agency, that address amounts or rates of that reimbursement, or that adjust those amounts or rates to contain costs within the amount of appropriations from the legislature for a state fiscal year; or

(7) that establish standards, requirements, or conditions for the eligibility of an individual for assistance under AS 18 or AS 47, or that establish standards for determining the amount of assistance that an eligible person is entitled to receive.

(h) This section does not create a private cause of action. If a designated state agency fails to comply with this section, the failure does not establish a ground on which to invalidate a regulation that has been filed by the lieutenant governor under AS 44.62.080. This subsection is not intended to prevent judicial review of a regulation under AS 44.62.300 for a reason unrelated to this section.

(i) In this section,

(1) "department" means the Department of Commerce, Community, and Economic Development;

(2) "designated state agency" means the

(A) Department of Commerce, Community, and Economic Development;

(B) Department of Environmental Conservation;

(C) Department of Health and Social Services; or

(D) Department of Labor and Workforce Development;

(3) "governs the conduct" means regulates the manner in which a small business conducts its business activities but does not include the imposition of a fee to cover the cost of a state service if the fee is charged uniformly to all users of the service;

(4) "proposed regulation" means a proposal for a new regulation or for a change in or an addition to an existing regulation but does not include the repeal of an existing regulation;

(5) "regulation" has the meaning given in AS 44.62.640 but does not include an emergency regulation under AS 44.62.250 - 44.62.260;

(6) "small business" means

(A) a business entity, including its affiliates, that

(i) is independently owned and operated; and

(ii) employs fewer than 100 employees;

(B) a village corporation that employs fewer than 100 employees; in this subparagraph, "village corporation" has the meaning given in 43 U.S.C. 1602(j); or

(C) a nonprofit utility that employs fewer than 100 employees; in this subparagraph, "utility" has the meaning given in AS 42.05.990.

History -

(Sec. 1 ch 91 SLA 2005)

Postponed Repeal Effective Date -

Delayed repeal of section. - Under Sec. 2, ch. 91, SLA 2005, this section is repealed January 1, 2009.

Cross References -

For duty of the Department of Commerce, Community, and Economic Development to provide to the legislature no later than March 15, 2008, a report on the effectiveness of this section in making regulations less intrusive and less costly for small businesses, see sec. 3, ch. 91, SLA 2005, in the 2005 Temporary and Special Acts.

Effective Date Notes -

Section 5, ch. 91, SLA 2005 makes this section effective January 1, 2006.

Editors Notes -

Section 4, ch. 91, SLA 2005, provides that this section "applies to a proposed regulation proposed by a designated state agency on or after January 1, 2006, or by an interested person under AS 44.62.220 on or after January 1, 2006."

## **F - Model Legislation - Small Business Regulatory Affairs Center Ohio**

### **122.08 Office of small business - powers and duties.**

(A) There is hereby created within the department of development an office to be known as the office of small business. The office shall be under the supervision of a manager appointed by the director of development.

(B) The office shall do all of the following:

- (1) Act as liaison between the small business community and state governmental agencies;
- (2) Furnish information and technical assistance to persons and small businesses concerning the establishment and maintenance of a small business, and concerning state laws and rules relevant to the operation of a small business. In conjunction with these duties, the office shall keep a record of all state agency rules affecting individuals, small businesses, or small organizations, as defined in section 121.24 of the Ohio Revised Code, and may testify before the joint committee on agency rule review concerning any proposed rule affecting individuals, small businesses, or small organizations.
- (3) Prepare and publish the small business register under section 122.081 of the Revised Code;
- (4) Receive complaints from small businesses concerning governmental activity, compile and analyze those complaints, and periodically make recommendations to the governor and the general assembly on changes in state laws or agency rules needed to eliminate burdensome and unproductive governmental regulation to improve the economic climate within which small businesses operate;
- (5) Receive complaints or questions from small businesses and direct those businesses to the appropriate governmental agency. If, within a reasonable period of time, a complaint is not satisfactorily resolved or a question is not satisfactorily answered, the office shall, on behalf of the small business, make every effort to secure a satisfactory result. For this purpose, the office may consult with any state governmental agency and may make any suggestion or request that seems appropriate.
- (6) Utilize, to the maximum extent possible, the printed and electronic media to disseminate information of current concern and interest to the small business community and to make known to small businesses the services available through the office. The office shall publish such books,

pamphlets, and other printed materials, and shall participate in such trade association meetings, conventions, fairs, and other meetings involving the small business community, as the manager considers appropriate.

(7) Prepare for inclusion in the department of development's annual report to the governor and general assembly, a description of the activities of the office and a report of the number of rules affecting individuals, small businesses, and small organizations that were filed with the office under division (B)(2) of section 121.24 of the Ohio Revised Code, during the preceding calendar year;

(8) Operate the Ohio first-stop business connection to assist individuals in identifying and preparing applications for business licenses, permits, and certificates and to serve as the central public distributor for all forms, applications, and other information related to business licensing. Each state agency, board, and commission shall cooperate in providing assistance, information, and materials to enable the connection to perform its duties under this division .

(C) The office may, upon the request of a state agency, assist the agency with the preparation of any rule that will affect individuals, small businesses, or small organizations.

(D) The director of development shall assign employees and furnish equipment and supplies to the office as the director considers necessary for the proper performance of the duties assigned to the office.

Effective Date: 09-26-2003



## G - Model Legislation - Mandatory Regulatory Review

### Hawaii

**§201M-5 Small business regulatory review board; powers.** (a) There shall be established within the department of business, economic development, and tourism, for administrative purposes, a small business regulatory review board to review any proposed new or amended rule or to consider any request from small business owners for review of any rule adopted by a state agency and to make recommendations to the agency or the legislature regarding the need for a rule change or legislation. For requests regarding county ordinances, the board may make recommendations to the county council or the mayor for appropriate action.

(b) The board shall consist of eleven members, who shall be appointed by the governor pursuant to section 26-34. Nominations to fill vacancies shall be made from names submitted by the review board. The appointments shall reflect representation of a variety of businesses in the State; provided that no more than two members shall be representatives from the same type of business, and that there shall be at least two representatives from each county.

(c) All members of the board shall be either a current or former owner or officer of a business and shall not be an officer or employee of the federal, state, or county government. A majority of the board shall elect the chairperson. The chairperson shall serve a term of not more than one year, unless removed earlier by a two-thirds vote of all members to which the board is entitled.

(d) A majority of all the members to which the board is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board is entitled shall be necessary to make any action of the board valid.

(e) In addition to any other powers provided by this chapter, the board may:

- (1) Adopt any rules necessary to implement this chapter;
- (2) Organize and hold conferences on problems affecting small business; and
- (3) Do any and all things necessary to effectuate the purposes of this chapter.

(f) The board shall submit an annual report to the legislature twenty days prior to each regular session detailing any requests from small business owners for review of any rule adopted by a state agency, and any recommendations made by the board to an agency or the legislature regarding the need for a rule change or legislation. The report shall also contain a summary of

the comments made by the board to agencies regarding its review of proposed new or amended rules. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §§3, 5; am L 2007, c 217, §4]

**§201M-6 Petition for regulatory review.** (a) In addition to the basis for filing a petition provided in section 91-6, any affected small business may file a written petition with the agency that has adopted the rules objecting to all or part of any rule affecting small business on any of the following grounds:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the small business impact statement submitted prior to the adoption of the rules;
- (2) The small business impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(b) Upon submission of the petition, the agency shall forward a copy of the petition to the board, as notification of a petition filed under this chapter. The agency shall promptly consider the petition and may seek advice and counsel regarding the petition from the appropriate departmental advisory committee on small business. Within sixty days after the submission of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business. The agency shall submit a written response of the agency's determination to the small business review board within sixty days after receipt of the petition. If the agency determines that the petition merits the adoption, amendment, or repeal of a rule, it may initiate proceedings in accordance with section 91-3.

(c) If the agency determines that the petition does not merit the adoption, amendment, or repeal of any rule, any affected small business may seek a review of the decision by the board. The board shall promptly convene a meeting pursuant to chapter 92 for the purpose of soliciting testimony that will assist in its determination whether to recommend that the agency

initiate proceedings in accordance with section 91-3. The board may base its recommendation on any of the following reasons:

- (1) The actual effect on small business was not reflected in, or significantly exceeded, the impact statement submitted prior to the adoption of the rules;
- (2) The impact statement did not consider new or significant economic information that reveals an undue impact on small business;
- (3) These impacts were not previously considered at the public hearing on the rules;
- (4) The rules create an undue barrier to the formation, operation, and expansion of small businesses in the State in a manner that significantly outweighs its benefit to the public;
- (5) The rules duplicate, overlap, or conflict with rules adopted by another agency or violate the substantive authority under which the rules were adopted; or
- (6) The technology, economic conditions, or other relevant factors justifying the purpose for the rules have changed or no longer exist.

(d) If the board recommends that an agency initiate rulemaking proceedings for any reason provided in subsection (c), it shall submit to the legislature an evaluation report and the agency's response as provided in subsection (b). The legislature may subsequently take any action in response to the evaluation report and the agency's response as it finds appropriate.

(e) If the board does not recommend that an agency initiate rulemaking proceedings, the board shall notify the small business of its decision and inform the small business that the small business may submit a complaint to the ombudsman pursuant to chapter 96 regarding the decision of the agency or board.

(f) Nothing in this section shall entitle an affected small business to a contested case hearing under chapter 91. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §5]

**§201M-7 Periodic review; evaluation report.** (a) Each agency having rules that affect small business shall submit by June 30 of each odd-numbered year, a list of those rules to the small business regulatory review board. The agency shall also submit a report describing the specific public purpose or interest for adopting the respective rules and any other reasons to justify its continued implementation.

(b) The small business regulatory review board shall provide to the head of each agency a list of any rules adopted by the agency that affect small business and have generated complaints or concerns, including any rules that the board determines may duplicate, overlap, or conflict with other rules, or exceed statutory authority. Within forty-five days after being notified by the board of the list, the agency shall submit a written report to the board in response to the complaints or concerns. The agency shall also state whether the agency has considered the continued need for the rules and the degree to which technology, economic conditions, and other relevant factors may have diminished or eliminated the need for maintaining the rules.

(c) The board may solicit testimony from the public regarding any report submitted by the agency under this section at a public meeting held pursuant to chapter 92. Upon consideration of any report submitted by an agency under this section and any public testimony, the board shall submit an evaluation report to the next regular session of the legislature. The evaluation report shall include an assessment as to whether the public interest significantly outweighs a rule's effect on small business and any legislative proposal to eliminate or reduce the effect on small business. The legislature may take any action in response to the report as it finds appropriate. [L 1998, c 168, pt of §2, §5; am L 2002, c 202, §5; am L 2007, c 217, §6]

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## Indiana

### IC 4-22-2.5-3.1

#### **Readoption of rule affecting small businesses; review required; consideration of regulatory alternatives; reexamination of economic impact statement**

Sec. 3.1. (a) This section applies to a rule that:

- (1) expires under this chapter after June 30, 2005; and
- (2) imposes requirements or costs on small businesses.

(b) As used in this section, "small business" has the meaning set forth in IC 4-22-2.1-4.

(c) Before an agency may act under section 3 of this chapter to readopt a rule described in subsection (a), the agency shall conduct a review to consider whether there are any alternative methods of achieving the purpose of the rule that are less costly or less intrusive, or that would otherwise minimize the economic impact of the proposed rule on small businesses. In reviewing a rule under this section, the agency shall consider the following:

- (1) The continued need for the rule.
- (2) The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.
- (3) The complexity of the rule, including any difficulties encountered by:
  - (A) the agency in administering the rule; or
  - (B) small businesses in complying with the rule.

(4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

(5) The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the

degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

(d) This subsection applies to a rule that was adopted through a rulemaking action initiated by the agency under IC 4-22-2-23 after June 30, 2005. In reviewing the rule under this section, the agency shall reexamine the most recent economic impact statement prepared by the agency under IC 4-22-2.1-5. The agency shall consider:

(1) the degree to which the factors analyzed in the statement have changed since the statement was prepared; and

(2) whether:

(A) any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5); or

(B) any regulatory alternatives not considered by the agency at the time the statement was prepared;

could be implemented to replace one (1) or more of the rule's existing requirements.

(e) After conducting the review required by this section, the agency shall:

(1) readopt the rule without change, if no alternative regulatory methods exist that could minimize the economic impact of the rule on small businesses while still achieving the purpose of the rule;

(2) amend the rule to implement alternative regulatory methods that will minimize the economic impact of the rule on small businesses; or

(3) repeal the rule, if the need for the rule no longer exists.

*As added by P.L.188-2005, SEC.6.*

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## Missouri

### **Small business regulatory fairness board established, members, terms, expenses, meetings--rulemaking authority.**

536.305. 1. There is hereby established the "Small Business Regulatory Fairness Board". The department of economic development shall provide staff support for the board.

2. The board shall be composed of nine members appointed in the following manner:

- (1) One member who is the chair of the minority business advocacy commission;
- (2) One member appointed by the president pro tempore of the senate;
- (3) One member appointed by the minority leader of the senate;
- (4) One member appointed by the speaker of the house of representatives;
- (5) One member appointed by the minority leader of the house of representatives; and
- (6) Four members appointed by the governor.

3. Each member of the board, except for the public members and the chair of the minority business advocacy commission, shall be a current or former owner or officer of a small business. All members of the board shall represent a variety of small businesses, both rural and urban, and be from a variety of geographical areas of this state, provided that no more than two members shall represent the same type of small business.

4. Members of the board shall serve a term of three years and may be reappointed at the conclusion of the term. No member shall serve more than three consecutive terms. Appointments shall be made so that one-third of the membership of the board shall terminate each year. The governor shall appoint the initial chairperson of the board and a majority of the board shall elect subsequent chairpersons. The chairperson shall serve as chair for a term of not more than two years.

5. Members of the board shall serve without compensation, but may be reimbursed for reasonable and necessary expenses relating to their performance of duties, according to the rules and regulations of travel issued by the office of administration. Members will be required to submit an expense account form in order to obtain reimbursement for expenses incurred.

6. The board shall meet as often as necessary, as determined by the chairperson of the board. All meetings of the board will be conducted in accordance with the governmental bodies and records act, chapter 610, RSMo, including closed sessions. Notice will be posted and will be provided to the joint committee on administrative rules. Minutes of the meetings shall be provided to all members, the office of the governor, and the joint committee on administrative rules.

7. In addition to any other powers provided by sections 536.300 to 536.328, the board may adopt any rules necessary to implement sections 536.300 to 536.328 and take any action necessary to effectuate the purposes of sections 536.300 to 536.328. Any rule or portion of a rule, as that term

is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of this chapter and, if applicable, section 536.028. This section and this chapter are nonseverable and if any of the powers vested with the general assembly pursuant to this chapter to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be invalid and void.

(L. 2004 H.B. 978, A.L. 2005 H.B. 576)

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## Virginia

§ [2.2-4007.1](#). Regulatory flexibility for small businesses; periodic review of regulations.

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

B. In addition to the requirements of §§ [2.2-4007](#) through [2.2-4007.06](#), prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:

1. The establishment of less stringent compliance or reporting requirements;
2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;
3. The consolidation or simplification of compliance or reporting requirements;
4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and
5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

D. In addition to the requirements of § [2.2-4017](#), on or before July 1, 2009, an agency shall review its existing regulations to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. If an agency head determines that completion of the review of existing regulations is not feasible by July 1, 2009, that agency shall publish a statement certifying that determination. An agency may extend the date required by this subsection in increments of one year, not to exceed a total of five years.

E. In addition to other requirements of § [2.2-4017](#), all final regulations adopted after July 1, 2005, shall be reviewed every five years to ensure that they minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law.

F. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

(2005, cc. 619, 682; 2007, cc. 873, 916.)



## H - Complaints Received by the Program

1. **Worker's Comp required for sole proprietor without employees?** Contacted DHSS and the response from the staff at the Division of Senior and Disabilities Services was that it was a justifiable misinterpretation on the part of the reader, since the form contained poorly drafted language.
2. **Mandatory North Slope Borough Certificate required to be a Conoco Phillips oil contractor?** Contacted Division of Corporations, Department of Natural Resources, no such thing at State or local government level. With the assistance of a Department procurement officer, contacted Conoco's procurement officers; Conoco had no idea how the mandatory requirement "got onto the form, and applicant could just ignore it".
3. **Mandatory management or administrator training to apply for assisted living home license?** Contacted, the Licensing and Certification at DHSS, said that their office didn't know of any such program available in Alaska or online, so they just overlooked their own requirement and didn't enforce it.
4. **Four-month delay in granting assisted living home license renewal due to disagreement between small business owner and DHSS licensing officer. Given reason for delay "kitchen did not meet DEC approval"?** Contacted DEC who was familiar with the assisted living home in question, and who had already issued a health permit for the kitchen. DEC volunteered to contact licensing officer and clear up the situation. Licensing officer said she hadn't processed the renewal application because she "hadn't gotten to it."
5. **Juneau municipal ordinance making mandatory twice-yearly inspection of hood fire suppression system in Mom and Pop bagel and soup kitchen?** Contacted State Fire Marshall who upheld the municipality's fire marshal's notice.
6. **Is there an end to the number and amount of taxes small businesses are required to pay State, Municipalities, Boroughs, Federal?** Caller from Dillingham listed her tax liabilities: city, borough, State corporation, boat, dock, raw fish, federal. This is an illustration of just one area of regulatory costs to a small business in Alaska. Program was unable to address any of her tax concerns...
7. **The reason I'm writing is to find out how you might interpret your role when government moves beyond proposed regulations into implementing them.** For instance the seafood processing unit with DEC at times makes some calls that might put

small businesses at a disadvantage and we were wondering if you might have a role in asking them about their actions.

8. **Can the City of Ketchikan force my business to “estimate my annual sales taxes before I make sales”? I owe them back taxes, and they want me to pay them a lump sum now equivalent to the estimated taxes I will pay next summer! Isn’t this illegal?** Caller referred to tax officer in Department of Revenue for information, with the caveat that the Department of Revenue has no jurisdiction over municipal tax practices.
9. **I keep getting sales calls from people trying to sell me the “legal” posters I’m supposed to post in my place of business, should I buy these?** Caller directed to the Department of Labor where the posters are free, or to the website, where he can download them and print them free of charge.
10. **A week ago I paid an online firm \$350 to apply for my State of Alaska business license, and I can’t find my license on the State’s website. Do you think that I got taken in by a scammer?** Caller was advised that the business license was not in the SOA database. He was encouraged to purchase the license online, and try and get a refund from the original vendor.

## I - Program Activities

1. Delivered ten (10) in-person presentations to chambers of commerce, business networking groups, trade organizations, Native Alaskan business conferences, and DCCED conferences;
2. created a Small Business Regulations website within the Department's homepage, to promote the pilot program; list current federal and state proposed regulations; and a listserv for users to sign up for regulatory alerts.  
[http://www.commerce.state.ak.us/oed/small\\_bus/small\\_bus\\_regulation.cfm](http://www.commerce.state.ak.us/oed/small_bus/small_bus_regulation.cfm)  
(Appendix B);
3. Produced brochure "Alaska's Small Business Regulations Program"; the manual/Powerpoint presentation, *How Regulations are Created in Alaska*; and the manual/Powerpoint, *Effectively Exercise Your Right to Comment on Regulations*.(Appendix C);
4. evaluated the Economic Effects Statements and Regulatory Flexibility Analyses for 11 proposed changes to regulations that affected small businesses. (Appendix D);
5. granted on-air interview to KCRM in Kenai, on "how Alaska businesses and business groups can influence the regulatory process";
6. researched and presented a written report to the Department, on E-Rulemaking as a mechanism to enhance public participation in the regulatory process in Alaska;
7. in collaboration with the Department of Labor Research and Analysis Division, and the Department of Commerce's Division of Community and Regional Affairs, and the Institute of Justice, surveyed 1,000 small business owners on their perceptions on how Alaska's regulatory process impacts a small business's start-up, growth, and ability to make a profit;
8. read portions of regulations that impact small businesses in the Alaska Administrative Code, and found a few regulations that have not been revised in over 15 years; that cite a repealed authority; fail to address developments in communications technology that have transformed program delivery; contain archaic, difficult to understand language; have mandates no longer applicable to contemporary rural geography and demographics; and fail to address increasingly complex conditions experienced by small businesses as a result of recent developments.

9. Conducted straw poll among 14 regulators in the four incumbent departments to determine “How many regulators have actually owned or operated a small business in Alaska or Outside”. Five responded none of whom had any small business experience.
10. In collaboration with OED staff and community business services providers developed the Small Business Assistance website, within the Department's main website, with links to appropriate community business providers' resources. Website has had 36,000 hits since March 2007.  
<http://www.commerce.state.ak.us/oed/smallbus/home.cfm>
11. In collaboration with OED staff and community business services providers, developed the Small Business Task Force, a collaborative group of business providers that meet monthly to address how to better serve entrepreneurs and small businesses in Alaska; avoid duplication of services; and offer technical training to business providers. Members include SBA, SBDC, ARDORs, Alaska Manufacturers Extension Program, and Made in Alaska program.
12. Worked closely with the staff of the Alaska regional assistance program (ARDORs), and the policy-makers in the Department to review the ARDOR program regulations, propose changes, and launch a regulations project (DOL 993-07-0093). The project is in the Department of Law, at this time.